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MICHAEL RODAK, JR.

No. 72-348

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1972, A.D.

JOHN A. HUTTER, et al.,

Petitioners

vs.

JOHN TANCK, et al.,

Respondents

PETITIONERS REPLY BRIEF TO BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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.D.

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In petitioners complaint averment No. 1 states: "That jurisdiction of this Honorable Court is invoked pursuant to the provisions of Title 28, Sections 1331, 1332 and other sections applicable. This certainly would including those pertaining to Civil rights, which is basically what this case is all about.

The 1968 Amendment to the Civil Rights Act provides in part as follows:

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One of these amendments prohibit two or more persons from conspiring to "injure, oppress, threaten or intimidate any citizens in the free exercise or enjoyment of any right, or privilege secured by him by the Constitution or laws of the United States."

This conspiracy statute carries a stiff penalty of up to a ten year prison sentence and a $10,000. fine.

The other Section of the 1968 Amendment to the Civil Rights Act, was written to apply specifically to persons who commit the same violation while acting under "color of law" which certainly is what these conspirators did in attempting to confiscate petitioners property by conspiracy with directors of the Door County Chamber of Commerce, an agency of Door County, Wisconsin, who drove the petitioners out of business. Milton Haen, Chairman of the Town Board of Egg Harbor and member of the Door County Board is one of the defendants in this action. He consistently approved County funds for this agency.

The petitioners are also entitled to the full protection of their Constitutional rights under any provisions which may be applicable including equal treatment before the law and due process.

Absolutely no amount need be involved to invoke the protection of Civil Rights or Constitutional provisions. Neither is there a diversity of citizenship requirement.

That is also true of actions under the Wisconsin Code, Chapter 70.501 and 70.502. This allows an action in tort for all damages and remedies "given by

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law in actions for damages for tortious or wrongful acts." See averments 12 and 14, page 9, appendix of petition.

Taxes have nothing to do with above provisions and cannot be used as a basis for claiming that the statutory amount was not met in a diversity action.

An action under these provisions could be brought for any tort, and if other requirements were met in a diversity action, under provisions of the Federal Rules of Civil Procedure, real damages for more than $10,000. exclusive of costs and could be claimed. Just what would the amount of real estate taxes assessed for a single year have to do with jurisdiction? This question is entirely irrevelant. The defendants by conspiracy have destroyed the business and use of property by Hutter.

The basic philosophy of a diversity action is the thought that when a citizen of one State sues a citizen of another State, he may not get a fair trial and the citizen of the State where the trial is held would be favored. Hutter believed this when he filed the case referred to in Judge Reynold's decision, namely Hutter Northern Trust v. Haen, et al., No. 17662. He thought the Federal Court would provide a fair, neutral, unbiased tribunal. This action was one directly involving the taxes assessed against Hutter.

It seems to Hutter that the idea that a diversity action in a Federal Court will give both parties an equally fair trial, is erroneous. For practical purposes the Federal Court in a particular State may not differ essentially from the State Court; the personnel is likely to be the same. Here Judge Myron L. Gordon

and John W. Reynolds were formerly judges or officials of the State of Wisconsin. Their sympathy would not be for Hutter the intruder from Illinois. It would favor fellow elected officials of Wisconsin. Like my old friend attorney Miller tells me, a judge can always find a decision to fit his opinion. It is almost impossible to find a truly neutral Court. That is why Chief Justice Burger went to Maine to get a judge to hear the contempt charges against the "Conspiracy 7" in Illinois. That is also why a judge from Tennessee was brought to Illinois to hear the case against Appeals Judge Lerner.

When Hutter found this out the hard way, he proceeded through the State Courts of Wisconsin to secure relief from his taxes. This matter is now pending before the Supreme Court of Wisconsin No. 129. It has been on the books so long that the number above was changed from No. 55.

Hutter believes his Honor Judge John W. Reynolds was wrong when he held this case was essentially the same as the one filed before Judge Gordon. That case involved taxes; this one does not. This case involves (1) the violation of Hutter's Civil and Constitutional rights (No diversity claim is necessary here) and (2) the claim for damages in tort under Wisconsin statutes, Chapters 70.501 and 70.502. This is a diversity matter in which Hutter claims real damages in excess of $10,000. exclusive of costs or interest. Ignoring the statute, there would be no limitation on tort damages for conspiracy.

The District Court certainly had jurisdiction on above facts.

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The Court is asked to review Hutter's Petition for Rehearing to Court of Appeals, pages 11-12-13 of the petition for Certiorari.

On page 12 respondents say, "Respondents refrain from comment on the scandalous matter found in petition."

Hutter's experience with the above named Judges is such that he tried to limit averments to avoid countless objections to the number and form of averments which would delay the case. This is why he did not include an averment containing the facts set forth on pages 12 and 13 of appendix of petition.

A motion in the District Court in Chicago usually takes only a few days for a decision. In Milwaukee it takes several months.

In averment 12, page 9 of petition, Hutter refers to the case against the agency of Door County, the corporation, the Door County Chamber of Commerce, (Slander, libel, and denial of the use of this public facility forced Hutter out of the resort business).

Hutter has reversed his Honor Judge Julius J. Hoffman, three times and the case No. 67 C 1261 has been assigned to another judge. Six years have elapsed by dilatory tactics. The same has been true in the case involving the Town Board of Egg Harbor, including the defendants herein. These have been continuing torts from 1960 to date.

The decisions of the Appeals Courts necessitated filing in Wisconsin claims against the directors, officers and agents of the corporation. This case No. 70 C 290

is before Judge Gordon. On motion of defendants (attorney Kirkegaard) he dismissed the case without right to amend because he did not like the averments (the same averments approved by Appeals Court in 67 C 1261). The Appeals Court Seventh Circuit reversed him. Now he has emasculated the amended complaint and there is serious question whether defendants will have to answer interrogatories that are awaiting answer for over two years. (Attorney Kirkegaard secretly wrote Judge Gordon asking him to prevent Hutter from continuing to appear as attorney pro se for himself and wife).

Yes indeed, it is almost impossible for a resident of this Country to obtain justice where his opponent is a unit of government, or establishment that has unlimited clout and influence. The Court might be interested in reviewing Hutter's petition for rehearing in No. 71-1419 and No. 72-447.

In opposition brief page 6 and 7, respondents indicate that they believe No. (4) and (5) do not apply. Innumerable decisions of this Court have certainly held that persons have recourse in the Federal Courts for violation of their Civil and Constitutional rights without regard to any amount of money involved.

Referring to page 8 of respondents Argument: The question is does the District Court have jurisdiction where plaintiffs claim in their complaint that their Civil and Constitutional rights have been violated by conspirators?

Continuing on page 10 respondents state: "Review by the Supreme Court does not encompass local matters and questions

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of State law, the decision of which does not involve any violation of the Federal Constitution or laws." The entire thrust of this action is precisely this violation of the Constitution and Civil rights law.

Continuing, "This Court has said that where it does not appear on the face of the complaint that the jurisdictional amount is involved, a Federal District Court should dismiss the case sua sponte? How could this be? Only diversity actions require a jurisdictional amount, certainly not Civil rights cases.

On pages 11 and 12 respondents quote from 32 Am. Jur. 2d Federal Practice P. 313 pp. 796-8.

"A plain showing of error is required for the Supreme Courts in their application of the rule that in diversity cases, Federal Courts are to apply State law."

The State of Wisconsin law specifically authorizes an action for damages as quoted in complaint. Nevertheless do the respondents claim that a citizen of Wisconsin could not sue another citizen of Wisconsin in tort for any amount of damages resulting from conspiracy?

Do they further assert that a citizen of Illinois could not sue a citizen of Wisconsin under the same circumstances in a diversity action and claim actual damages in excess of $10,000. not including costs and interest?

Do they further assert that no person may sue for violation of his Civil and Constitutional in Federal Courts without a statutory amount being involved?

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For over seven years, by means of dilatory technical roadblocks, with the cooperation of the Courts, the "establishment" in Door County, Wisconsin has been able to destroy the Hutter's reputation, business and property. They seek the further cooperation of this Court.

CONCLUSION

The petitioners believe that the law is clear and that they should be granted their petition for a Writ of Certiorari.

Respectfully submitted,

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GR 7-2259
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